

Levi A. Robison and Mark A. English  
Deputy Yellowstone County Attorneys  
Yellowstone County Courthouse, Room 701  
P.O. Box 35025  
Billings, Montana 59107-5025  
(406) 256-2870  
[lrobison@co.yellowstone.mt.gov](mailto:lrobison@co.yellowstone.mt.gov) and [menglish@co.yellowstone.mt.gov](mailto:menglish@co.yellowstone.mt.gov)

Attorneys for Yellowstone County, et al

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

JOSHUA WILSON,	)	
	)	Cause No. CV 17-0091-BLG-SPW-TJC
Plaintiff,	)	
	)	Judge Ingrid Gustafson
vs.	)	
	)	<b>YELLOWSTONE COUNTY’S</b>
YELLOWSTONE COUNTY, <i>et al</i> ,	)	<b>ANSWER TO THE</b>
	)	<b>AMENDED COMPLAINT</b>
Defendants.	)	
_____	)	

Yellowstone County answers Joshua Wilson’s Amended Complaint as follows:

**Parties**

1. The County admits the allegations in paragraph 1.
2. The County admits the allegations in paragraph 2.

**Jurisdiction and Venue**

3. The County admits the allegations in paragraph 3.

4. The County admits the allegations in paragraph 4.
5. The County admits the allegations in paragraph 5.
6. The County admits the allegations in paragraph 6.

#### **Facts Common to all Counts**

7. The County denies the allegations in paragraph 7.
8. The County denies the allegations in paragraph 8.
9. The County denies the allegations in paragraph 9.
10. The County denies the allegations in paragraph 10.
11. The County denies the allegations in paragraph 11.
12. The County admits the allegations in paragraph 12.
13. The County denies the allegations in paragraph 13.
14. The County denies the allegations in paragraph 14.
15. The County denies the allegations in paragraph 15.
16. The County denies the allegations in paragraph 16.
17. The County denies the allegations in paragraph 17.

#### **Count 1 - Negligence**

18. The County does not have to respond to the allegations in paragraph 18.
18. To the extent the County is required to respond to the allegations, it re alleges its previous responses.

19. The County admits in part and denies in part the allegations in paragraph 19. The County admits it had a duty of reasonable care towards Wilson. The County denies the rest of the allegations in the paragraph.

20. The County denies the allegations in paragraph 20.

21. The County denies the allegations in paragraph 21.

### **Count 2 – Negligence Per Se**

22. The County does not have to respond to the allegations in paragraph 22. To the extent the County is required to respond to the allegations, it re alleges its previous responses.

23. The County denies the allegations in paragraph 23.

24. The County denies the allegations in paragraph 24.

25. The County denies the allegations in paragraph 25.

### **Count 3 – State Constitution Claims**

26. The County does not have to respond to the allegations in paragraph 26. To the extent the County is required to respond to the allegations, it re alleges its previous responses.

27. The County denies the allegations in paragraph 27.

///

///

///

#### **Count 4 – 42 U.S.C. § 1983**

28. The County does not have to respond to the allegations in paragraph 28. To the extent the County is required to respond to the allegations, it re alleges its previous responses.

29. The County denies the allegations in paragraph 29.

30. The County denies the allegations in paragraph 30.

31. The County denies the allegations in paragraph 31.

32. The County denies the allegations in paragraph 32.

33. The County denies the allegations in paragraph 33.

34. The County denies any allegation not explicitly admitted.

#### **Affirmative Defenses**

1. The conduct of the County conformed to the applicable duty of care.

2. The County did not breach any duty of care it may have owed towards Wilson.

3. The statute relied upon by Wilson for his negligence per se claim does not create a standard of care.

4. The County's conduct conformed to the applicable Montana Constitutional standards.

5. An entity other than the County or Wilson caused Wilson's damages.

6. Wilson's own negligence or conduct is responsible for Wilson's damages.

7. Wilson's own negligence contributed to or exceeded any negligence of the County and therefore any recovery against the County should be precluded or reduced.

8. Pursuant to Section 2-9-108(1) of the Montana Code Annotated, the County is not liable for damages in excess of the statutory limits applicable to governmental agencies.

9. Pursuant to Section 27-2-209 of the Montana Code Annotated, any recovery against the County should be reduced by amounts received by Wilson from collateral sources.

10. Pursuant to Section 2-9-105 of the Montana Code Annotated, the County is immune from exemplary and punitive damages.

11. The alleged acts complained of may have been committed by employees acting outside the course and scope of their employment. Pursuant to Section 2-9-102 of the Montana Code Annotated, the County is not liable for torts committed by its employees not acting within the scope of their employment or duties.

12. The County did not approve of any unconstitutional actions by its employees.

13. The County did not violate any of Wilson's Constitutional rights.

14. The County did not violate any of Wilson's Constitutional rights through any deliberate policy, custom, or practice.

15. The County did not fail to adequately train, supervise, or discipline Officer Degele for the alleged acts committed by him.

16. The County did not ratify any of the alleged unconstitutional acts committed by Officer Degele.

17. Punitive damages are unavailable in 42 U.S.C. § 1983 claims brought against a state entity.

18. The County reserves the right to assert affirmative defenses as discovery or other information warrants.

### **Relief**

Yellowstone County requests the Court: grant judgment in favor of the County and against Wilson, (2) award the County its costs and attorney fees for the case and (3) award any other relief it deems proper under the circumstances.

Dated this 29th day of June, 2017.

/s/ Levi A. Robison

Levi A. Robison

Deputy Yellowstone County Attorney

## Certificate of Service

I certify that on the date below I mailed a copy of the attached Yellowstone County's Answer to the Amended Complaint to:

1 CM/ECF  
       Hand Delivery  
2 Mail  
       Overnight Delivery Service  
       Fax  
       E-mail

1. Clerk, U.S. District Court
2. William D'Alton  
D'ALTON LAW FIRM, P.C.  
222 North 32<sup>nd</sup> Street, Suite 903  
P.O. Box 702  
Billings, MT 59103-0702  
[bill@daltonlawpc.com](mailto:bill@daltonlawpc.com)

Brian K. Gallik  
James P. Molloy  
GALLIK, BREMER & MOLLOY, P.C.  
777 East Main Street, Ste. 203  
P.O. Box 70  
Bozeman, MT 59771-0070  
[brian@galliklawfirm.com](mailto:brian@galliklawfirm.com)  
[jim@galliklawfirm.com](mailto:jim@galliklawfirm.com)

*Attorneys for Joshua Wilson*

Dated this 29th day of June, 2017.

/s/ Levi A. Robison  
Levi A. Robison  
Deputy Yellowstone County Attorney